IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 39 of 2007.

Date of decision: 1.3.2007.

Hari Chand & anr. ….. **Appellants.**

Vs.

Premi Devi & ors. …. **Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Ms. Jyotsna Rewal Dua, Advocate.

For the Respondents :

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. Respondent- plaintiff is the owner of certain shop alongwith the proforma respondents. The shop was let out to the appellants-defendants. Tenancy was terminated by a notice, under Section 106 of the Transfer of Property Act, some time in the year 2000 and a suit was filed. Later on, that suit was withdrawn with leave to file a fresh one on the same cause of action. Thereafter, respondents- plaintiff served a fresh notice, under Section 106 of the Transfer of Property Act and filed the suit, out of which this appeal has arisen. The trial court decreed the suit. Appeal filed by the defendants- appellants in the court of District Judge stands dismissed. Now the appellants- defendants have come in second appeal to this Court.

Whether the reporters of the local papers may be allowed to see the Judgment?

3. It is submitted by the learned counsel for the appellants-defendants that the court was not justified in granting leave to file a fresh suit on the same cause of action and, therefore, fresh suit filed by the respondent- plaintiff, was not maintainable. The plea has been noticed only to be rejected. Admittedly, the respondent- plaintiff alongwith the proforma respondents is the owner of the shop. She has filed the suit based on title. A title-holder may file a fresh suit after the dismissal of the earlier one (without contest) provided limitation is available. Therefore, the question whether the trial court was justified in granting the permission for filing a fresh suit on the same cause of action when allowing the respondent- plaintiff to withdraw the earlier suit, is of no relevance.

4. Since no substantial question of law arises, appeal is dismissed.

CMP Nos. 69 and 70 of 2007.

5. Infructuous.

March 1, 2007. **(Surjit Singh)**
(*Hem*) **Judge.**